

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2004-1858-PST-E TCEQ ID: RN101662930 CASE NO.: 21940**  
**RESPONDENT NAME: LEO JOHNSON DBA CONNALLY CENTER**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 103 East Crest Drive, Waco, McClellan County</p> <p><b>TYPE OF OPERATION:</b> Out-of-service underground storage tank system</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 24, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 40px;"><b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 40px;"><b>TCEQ Enforcement Coordinator:</b> Ms. Rebecca Clausewitz, Water Enforcement Section, MC R-13, (210) 403-4012</p> <p style="margin-left: 40px;"><b>TCEQ Regional Contact:</b> Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001</p> <p style="margin-left: 40px;"><b>Respondent:</b> Mr. Leo Johnson, Owner, Connally Center, 4315 Woodland Park Drive, Brownwood, Texas 76801</p> <p style="margin-left: 40px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> September 21, 2004</p> <p><b>Date of NOE Relating to this Case:</b> November 5, 2004</p> <p><b>Background Facts:</b> The EDPRP was filed on August 1, 2005, and mailed to the Respondent via certified mail, return receipt requested, and via first-class mail, postage pre-paid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent has been contacted several times by phone and urged to file an answer. The respondent was also sent a "last chance" letter on October 23, 2007, with a copy of the Default Order and instruction on how to file an answer and avoid default. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST</b></p> <p>1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2. Failed to empty the system of any residue from stored regulated substances which remained in the temporarily out of service UST system exceeding a depth of 2.5 cm at the deepest point, and exceeding 0.3 percent by weight of the system at full capacity [30 TEX. ADMIN. CODE § 334.54(d)(2)].</p>	<p><b>Total Assessed:</b> \$26,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$26,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements</b> The Respondent shall undertake the following technical requirements:</p> <p>1. Within 60 days, the Respondent shall complete either of the following two options:</p> <p><u>Option 1:</u></p> <ul style="list-style-type: none"> <li>a. Monitor USTs for releases;</li> <li>b. Ensure that the UST system has been emptied of all regulated substances;</li> <li>c. Provide corrosion protection for all underground metal components of the UST system;</li> <li>d. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and</li> <li>e. Cap, plug, lock, and/or otherwise secure all piping, pumps, manways, tank access points, and ancillary equipment.</li> </ul> <p><u>Option 2:</u></p> <p>Permanently remove the UST system from service.</p> <p>2. Within 75 days, submit written certification as described, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with these Ordering Provisions.</p>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>3. Failed to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)].</p> <p>4. Failed to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3) and TEX. WATER CODE § 26.346].</p> <p>5. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>6. Failed to provide corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER. CODE § 26.3475(d)].</p> <p>7. Failed to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER. CODE § 26.3475(c)(1)].</p>		



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

## DATES

PCW 16-Feb-2004

Screening 17-Nov-2004

Priority Due 15-Feb-2005

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent	Leo Johnson dba Connally Center
Reg. Ent. Ref. No.	RN101662930
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 47814
Facility/Site Region	9-Waco
Major/Minor Source	Minor Source

## CASE INFORMATION

Enf./Case ID No.	21940	No. of Violations	7
Docket No.	2004-1858-PST-E	Order Type	1660
Case Priority	3	Enf. Coordinator	Kent Heath
Media Program(s)	Petroleum Storage Tank	EC's Team	Enforcement Team 2
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$26,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, &amp; 7 \$0

Notes No change due to average performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The Respondent is not yet in compliance.

Economic Benefit 0% Enhancement\* Subtotal 6 \$0

Total EB Amounts	\$11,378
Approx. Cost of Compliance	\$24,150

\*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$26,000

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$26,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$26,000

DEFERRAL Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral due to expiration of expedited process.

PAYABLE PENALTY \$26,000

Screening Date 17-Nov-2004

Docket No. 2004-1858-PST-E

PCW

Respondent Leo Johnson dba Connally Center

Policy Revision 2 (September 2002)

Case ID No. 21940

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101662930

Additional ID No(s) Petroleum Storage Tank Facility ID No. 47814

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kent Heath

Site Address 103 East Crest Drive, Waco, McLennan County

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	N/A	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	N/A	0%
	Participation in a voluntary pollution reduction program	N/A	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	N/A	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 17-Nov-2004

Docket No. 2004-1858-PST-E

PCW

Respondent Leo Johnson dba Connally Center

Policy Revision 2 (September 2002)

Case ID No. 21940

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101662930

Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kent Heath

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Secondary Rule Cite(s)

Violation Description

Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing underground storage tank (UST) system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

		Harm		
Release		Major	Moderate	Minor
Actual				
Potential	X			

Percent 25%

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to permanently remove from service all non-compliant USTs could result in the exposure of a significant amount of contaminants which would exceed levels that are protective to human health and the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended based on documentation of the violation during the September 21, 2004, investigation, to the February 23, 2005, settlement deadline, to make the penalty commensurate with the situation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$4,553

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

**Economic Benefit Worksheet**

Respondent: Leo Johnson dba Connally Center  
 Case ID No: 21940  
 Reg. Ent. Reference No: RN101662930  
 Additional ID No(s): Petroleum Storage Tank Facility ID No. 47814  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$10,000	22-Feb-1999	23-Aug-2005	6.5	\$217	\$4,336	\$4,553
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated expense to permanently remove a UST system from service. Date required is the date the tanks were required to be removed. Final date based on the projected compliance date.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,000

TOTAL \$4,553

<b>Screening Date</b> 17-Nov-2004		<b>Docket No.</b> 2004-1858-PST-E		<b>PCW</b>
<b>Respondent</b> Leo Johnson dba Connally Center		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 21940		<i>PCW Revision May 17, 2004</i>		
<b>Reg. Ent. Reference No.</b> RN101662930				
<b>Additional ID No(s).</b> Petroleum Storage Tank Facility ID No. 47814				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Kent Heath				
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px;">2</div>		
<b>Primary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.54(d)(2)</div>		
<b>Secondary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;"></div>		
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 5px;"> <p>Failure to empty the system of any residue from stored regulated substances which remained in the temporarily out of service UST system exceeding a depth of 2.5 centimeters (cm) at the deepest point, and exceeding 0.3 percent by weight of the system at full capacity. Specifically, the investigator documented 3 inches or 7.4 cm of product present in tank no. 3.</p> </div>		
<b>Base Penalty</b>				<div style="border: 1px solid black; padding: 2px;">\$10,000</div>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>
	Potential	<div style="border: 1px solid black; padding: 2px;">X</div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>
				<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">25%</div>
<b>&gt;&gt; Programmatic Matrix</b>				
Matrix Notes	Falsification	Major	Moderate	Minor
	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>
	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;"></div>			
<p>Failure to empty the system of any residue from stored regulated substance could result in the exposure of a significant amount of contaminants which would exceed levels that are protective to human health and the environment.</p>				
<b>Adjustment</b>				<div style="border: 1px solid black; padding: 2px;">-\$7,500</div>
<b>Base Penalty Subtotal</b>				<div style="border: 1px solid black; padding: 2px;">\$2,500</div>
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<div style="border: 1px solid black; padding: 2px;">2</div>		
mark only one use a small x	daily	<div style="border: 1px solid black; padding: 2px;"></div>		
	monthly	<div style="border: 1px solid black; padding: 2px;"></div>		
	quarterly	<div style="border: 1px solid black; padding: 2px;">X</div>		
	semiannual	<div style="border: 1px solid black; padding: 2px;"></div>		
	annual	<div style="border: 1px solid black; padding: 2px;"></div>		
	single event	<div style="border: 1px solid black; padding: 2px;"></div>		
<p>Two quarterly events are recommended based on documentation of the violation during the September 21, 2004, investigation, to the February 23, 2005, settlement deadline, to make the penalty commensurate with the situation.</p>				<b>Violation Base Penalty</b> <div style="border: 1px solid black; padding: 2px;">\$5,000</div>
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <div style="border: 1px solid black; padding: 2px;">\$23</div>		<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; padding: 2px;">\$5,000</div>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<div style="border: 1px solid black; padding: 2px;">\$5,000</div>



**Economic Benefit Worksheet**

Respondent Leo Johnson dba Connally Center  
 Case ID No. 21940  
 Reg. Ent. Reference No. RN101662930  
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$500	21-Sep-2004	25-Aug-2005	0.9	\$23	n/a	\$23
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to empty the system of any residue from stored regulated substances. Date required is the investigation date. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$23

<b>Screening Date</b> 17-Nov-2004		<b>Docket No.</b> 2004-1858-PST-E		<b>PCW</b>	
<b>Respondent</b> Leo Johnson dba Connally Center		<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 21940		<i>PCW Revision May 17, 2004</i>			
<b>Reg. Ent. Reference No.</b> RN101662930					
<b>Additional ID No(s)</b> Petroleum Storage Tank Facility ID No. 47814					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Kent Heath					
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px;">3</div>			
<b>Primary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.54(b)</div>			
<b>Secondary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;"></div>			
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 2px;">Failure to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons.</div>			
<b>Base Penalty</b>					<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

**>> Environmental, Property and Human Health Matrix**

<b>Harm</b>				
<b>Release</b>	Major	Moderate	Minor	
Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">10%</div>
Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>x</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	
<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;"></div>

**Matrix Notes**

Failure to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points and ancillary equipment could result in exposure of a significant amount of contaminants which would not exceed levels that are protective to human health and the environment.

**Adjustment**

-\$9,000

**Base Penalty Subtotal**

\$1,000

**Violation Events**

**Number of Violation Events**

2

mark only one use a small x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; padding: 2px;">\$2,000</div>
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	quarterly	<b>x</b>	
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

Two quarterly events are recommended based on documentation of the violation during the September 21, 2004, investigation, to the February 23, 2005, settlement deadline.

<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b> <div style="border: 1px solid black; padding: 2px;">\$5</div>		<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; padding: 2px;">\$2,000</div>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<div style="border: 1px solid black; padding: 2px;">\$2,000</div>	

**Economic Benefit Worksheet**

**Respondent** Leo Johnson dba Connally Center  
**Case ID No.** 21940  
**Reg. Ent. Reference No.** RN101662930  
**Additional ID No(s).** Petroleum Storage Tank Facility ID No. 47814  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	21-Sep-2004	25-Aug-2005	0.9	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to cap, plug, lock all piping, pumps, manways and tank access points. Date required is the date of the investigation. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$100****TOTAL** **\$5**

<b>Screening Date</b> 17-Nov-2004	<b>Docket No.</b> 2004-1858-PST-E	<b>PCW</b>
<b>Respondent</b> Leo Johnson dba Connally Center	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 21940	<i>PCW Revision May 17, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN101662930		
<b>Additional ID No(s).</b> Petroleum Storage Tank Facility ID No. 47814		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Kent Heath		
<b>Violation Number</b> <input type="text" value="4"/>		
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.7(d)(3)"/>	
<b>Secondary Rule Cite(s)</b>	<input type="text" value="Tex. Water Code § 26.346"/>	
<b>Violation Description</b>	<input type="text" value="Failure to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, Mr. Johnson failed to amend the registration to reflect the out-of-service status of the UST system."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

	<b>Harm</b>				
	Major	Moderate	Minor		
Release	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
				<b>Percent</b>	<input type="text"/>

OR

**>> Programmatic Matrix**

	<b>Falsification</b>				
	Major	Moderate	Minor		
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Major	<input checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>		
Moderate	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Minor	<input type="text"/>	<input type="text"/>	<input type="text"/>		
				<b>Percent</b>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

	<b>daily</b>				
	monthly	quarterly	semiannual	annual	single event
mark only one	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
use a small x	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="X"/>

**Violation Base Penalty**

One single event is recommended based on documentation of the violation during the September 21, 2004, investigation.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$5"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,000"/>	

**Economic Benefit Worksheet**

Respondent: Leo Johnson dba Connally Center  
 Case ID No. 21940  
 Reg. Ent. Reference No. RN101662930  
 Additional ID No(s): Petroleum Storage Tank Facility ID No. 47814  
 Media [Statute]: Petroleum Storage Tank  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
Description	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	21-Sep-2004	25-Aug-2005	0.9	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to complete and submit the registration and self-certification form. Date required is the investigation date. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$100****TOTAL** **\$5**

Screening Date 17-Nov-2004

Docket No. 2004-1858-PST-E

PCW

Respondent Leo Johnson dba Connally Center

Policy Revision 2 (September 2002)

Case ID No. 21940

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101662930

Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kent Heath

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description

Failure to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
	Actual				
Potential					

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		X			

Matrix Notes 100% of the rule requirement was not meet.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

## Violation Events

Number of Violation Events 3

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$3,000

Three single events (one per each tank) are recommended based on documentation of the violation during the September 21, 2004, investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$2,048

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

**Economic Benefit Worksheet**

Respondent: Leo Johnson dba Connally Center  
 Case ID No. 21940  
 Reg. Ent. Reference No. RN101662930  
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,950	21-Sep-2003	21-Sep-2004	1.0	\$98	\$1,950	\$2,048

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three (3) USTs. Date required is one year prior to the investigation date. Final date is one year later, as this is an annual requirement.

Approx. Cost of Compliance \$1,950

TOTAL \$2,048

Screening Date 17-Nov-2004

Docket No. 2004-1858-PST-E

PCW

Respondent Leo Johnson dba Connally Center

Policy Revision 2 (September 2002)

Case ID No. 21940

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101662930

Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kent Heath

Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(d)

Violation Description Failure to provide corrosion protection for the UST system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
	Actual			
	Potential	X		25%

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
Matrix Notes	Failure to provide corrosion protection for a UST system could result in the exposure of a significant amount of contaminants which would exceed levels that are protective to human health and the environment.				

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended based on documentation of the violation during the September 21, 2004, investigation, to the February 23, 2005, settlement deadline, to make the penalty commensurate with the situation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$4,676

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000



**Economic Benefit Worksheet**

**Respondent** Leo Johnson dba Connally Center  
**Case ID No.** 21940  
**Reg. Ent. Reference No.** RN101662930  
**Additional ID No(s).** Petroleum Storage Tank Facility ID No. 47814  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$10,000	22-Dec-1998	25-Aug-2005	6.7	\$223	\$4,453	\$4,676
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install corrosion protection for the UST system. Date required is the date corrosion protection was required to be installed. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,000

TOTAL \$4,676

Screening Date 17-Nov-2004

Docket No. 2004-1858-PST-E

PCW

Respondent Leo Johnson dba Connally Center

Policy Revision 2 (September 2002)

Case ID No. 21940

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101662930

Additional ID No(s). Petroleum Storage Tank Facility ID No. 47814

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kent Heath

Violation Number 7

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

Violation Description Failure to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			

Percent 25%

## &gt;&gt; Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Failure to monitor the USTs for releases could result in the exposure of a significant amount contaminants which would exceed levels that are protective to human health and the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended based on documentation of the violation during the September 21, 2004, investigation, to the February 23, 2005, settlement deadline, to make the penalty commensurate with the situation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$69

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

**Economic Benefit Worksheet**

**Respondent** Leo Johnson dba Connally Center  
**Case ID No.** 21940  
**Reg. Ent. Reference No.** RN101662930  
**Additional ID No(s).** Petroleum Storage Tank Facility ID No. 47814  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	21-Sep-2004	25-Aug-2005	0.9	\$69	n/a	\$69

Notes for DELAYED costs

Estimated cost to provide a release detection method. Date required is the investigation date.  
Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$69

## Compliance History

Customer/Respondent/Owner-Operator:	CN602729717	JOHNSON, LEO	Classification: AVERAGE	Rating: 3.010
Regulated Entity:	RN101662930	CONNALLY CENTER	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		47814
Location:	103 E CREST DR, WACO, TX, 76705		Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	November 17, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 17, 1999 to January 17, 2004			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Kent Heath Phone: (512) 239-4575

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |
| 6. Comments:   |     |

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LEO JOHNSON DBA CONNALLY  
CENTER,  
RN101662930**

§  
§  
§  
§  
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§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2004-1858-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26; and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Leo Johnson dba Connally Center ("Mr. Johnson").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. Johnson owns an out-of-service underground storage tank ("UST") system located at 103 East Crest Drive, Waco, McLennan County, Texas (the "Facility").
2. Mr. Johnson's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Johnson's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on September 21, 2004, a TCEQ Waco Regional Office investigator documented that Mr. Johnson:
  - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements;

- b. Failed to empty the system of any residue from stored regulated substances which remained in the temporarily out of service UST system exceeding a depth of 2.5 centimeters (cm) at the deepest point, and exceeding 0.3 percent by weight of the system at full capacity;
  - c. Failed to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons;
  - d. Failed to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition;
  - e. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
  - f. Failed to provide corrosion protection for the UST system; and
  - g. Failed to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring.)
4. Mr. Johnson received notice of the violations on or about November 10, 2004.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Leo Johnson dba Connally Center" (the "EDPRP") in the TCEQ Chief Clerk's office on August 1, 2005.
6. By letter dated August 1, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Johnson with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Johnson received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Johnson received notice of the EDPRP, provided by the Executive Director. Mr. Johnson failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Johnson is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Johnson failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Johnson failed to empty the system of any residue from stored regulated substances which remained in the temporarily out of service UST system exceeding a depth of 2.5 cm at the deepest point, and exceeding 0.3 percent by weight of the system at full capacity, in violation of 30 TEX. ADMIN. CODE § 334.54(d)(2).
4. As evidenced by Finding of Fact No. 3.c., Mr. Johnson failed to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b).
5. As evidenced by Finding of Fact No. 3.d., Mr. Johnson failed to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3) and TEX. WATER CODE § 26.346.
6. As evidenced by Finding of Fact No. 3.e., Mr. Johnson failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
7. As evidenced by Finding of Fact No. 3.f., Mr. Johnson failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d).
8. As evidenced by Finding of Fact No. 3.g., Mr. Johnson failed to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).

9. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Johnson with proper notice of the EDP RP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
10. As evidenced by Finding of Fact No. 7, Mr. Johnson has failed to file a timely answer to the EDP RP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Johnson and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Johnson for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
12. An administrative penalty in the amount of twenty six-thousand dollars (\$26,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Johnson is assessed an administrative penalty in the amount of twenty-six thousand dollars (\$26,000.00) for violations of TEX. WATER CODE chs. 7 and 26, and rules of the TCEQ. The payment of this administrative penalty and Mr. Johnson's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Leo Johnson dba Connally Center; Docket No. 2004-1858-PST-E" to:



Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. Johnson shall undertake the following technical requirements:
  - a. Within 60 days after the effective date of this Order, Mr. Johnson shall complete either of the following two options:
    - i. Option 1:
      - A. Monitor USTs for releases, in accordance with 30 TEX. ADMIN. CODE § 334.50 (relating to Release Detection);
      - B. Ensure that the UST system has been emptied of all regulated substances in accordance with applicable provisions of 30 TEX. ADMIN. CODE § 334.54(d) (relating to Empty Systems);
      - C. Provide corrosion protection for all underground metal components of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49 (relating to Corrosion Protection); and
      - D. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b) to:

Mr. Rob Norris, Senior Financial Analyst  
Financial Assurance Unit, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
      - E. Cap, plug, lock, and/or otherwise secure all piping, pumps, manways, tank access points, and ancillary equipment in accordance with 30 TEX. ADMIN. CODE § 334.54(b).

- ii. Option 2: Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55 (relating to Permanent Removal from Service).
- b. Within 75 days after the effective date of this Order, Mr. Johnson shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with either Ordering Provision Nos. 2.a.i.A. through 2.a.i.E., or 2.a.ii.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mr. Frank Burleson, Waste Section Manager  
Texas Commission on Environmental Quality  
Waco Regional Office  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

- 3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Johnson. Mr. Johnson is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Johnson fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Johnson's failure to comply is not a violation of this Order. Mr. Johnson shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Johnson shall notify the Executive Director within seven days after Mr. Johnson becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Johnson shall be made in writing to the Executive Director. Extensions are not effective until Mr. Johnson receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Johnson if the Executive Director determines that Mr. Johnson has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF XAVIER GUERRA

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

"My name is Xavier Guerra. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Leo Johnson dba Connally Center" (the "EDPRP") with the Office of the Chief Clerk on August 1, 2005.

I sent the EDPRP to Mr. Johnson at his last known address on August 1, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

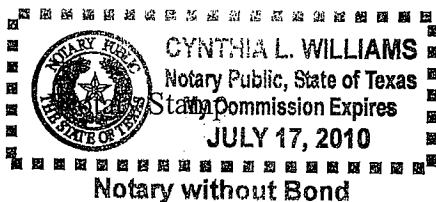
More than 20 days have elapsed since Mr. Johnson received notice of the EDPRP. Mr. Johnson failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".



Xavier Guerra  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 25<sup>th</sup> day of January A.D., 2008.

  
Notary Signature